

U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street N.W.  
Washington, D. C. 20536

**PUBLIC COPY**

**JAN 16 2004**

FILE [REDACTED] Office: Miami (TAM)

Date:

IN RE: Obligor:  
Bonded Alien:

[REDACTED]

IMMIGRATION BOND: Bond Conditioned for the Delivery of an Alien under Section 103  
of the Immigration and Nationality Act, 8 U.S.C. § 1103

ON BEHALF OF OBLIGOR:

[REDACTED]

identifying information  
provided to the public  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Mari Johnson*  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The delivery bond in this matter was declared breached by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that on August 20, 2001, the obligor posted a \$5,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated August 30, 2002, was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender to the Immigration and Naturalization Service (legacy INS), now Immigration and Customs Enforcement (ICE), at 9:00 a.m. on September 27, 2002, at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On October 3, 2002, the district director informed the obligor that the delivery bond had been breached.

On appeal, counsel asserts that the director failed to attach a properly completed questionnaire to the Form I-340 as the sections on criminal background/detention and miscellaneous issues were not filled out. Counsel argues that the failure to complete all sections of the questionnaire invalidates the bond breach, because it does not comply with the Amwest/Reno Settlement Agreement entered into on June 22, 1995 by the legacy INS and Far West Surety Insurance Company.

Counsel indicates:

I am attaching a questionnaire brief, which is a history of the I-340 questionnaire and the requirements under Amwest I, Amwest II, and many INS [now ICE] memorandums, wires and training materials dedicated to this particular issue. They make it clear that each District must attach a properly completed (and signed) questionnaire to each I-340 at the time they send it to the surety. Improperly completed questionnaires, or those that do not provide answers to all sections (including a negative one) do not satisfy the Amwest Settlements' requirements.

Counsel, however, fails to submit the ICE memoranda, wires and training materials to support his arguments. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, training materials are not binding on ICE.

The Settlement Agreement, Exhibit F, provides that "a questionnaire prepared by the surety with approval of the INS [now ICE] will be completed by [ICE] whenever a demand to produce a bonded alien is to be delivered to the surety. The completed questionnaire will be certified correct by an officer of [ICE] delivered to the surety with the demand."

ICE is in substantial compliance with the Settlement Agreement when the questionnaire provides the obligor with sufficient identifying information to assist in expeditiously locating the alien, and does not mislead the obligor. Each case must be considered on its own merits. Failure to include a photograph, for example, which is not absolutely required under the terms of the Agreement, does not have the same impact as an improper alien number or wrong name. The AAO must look at the totality of the circumstances to determine whether the obligor has been prejudiced by ICE's failure to fill in all of the blanks. A strict reading of the word "complete" as urged by counsel sets standards that are contained in neither of the agreements styled *Amwest I* and *Amwest II*.<sup>1</sup>

Counsel has not alleged or established any prejudice resulting from ICE's failure to complete each section of the questionnaire. More importantly, failure to complete each section does not invalidate the bond breach.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an immigration officer or immigration judge, as specified in the appearance notice, upon each and every written request until removal proceedings are finally terminated, or until the said alien is actually accepted by ICE for detention or removal. *Matter of Smith*, 16 I&N Dec. 146 (Reg. Comm. 1977).

The regulations provide that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. § 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. § 103.6(e).

8 C.F.R. § 103.5a(a)(2) provides that personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;
- (iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;
- (iv) Mailing a copy by certified or registered mail,

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<sup>1</sup> *Amwest II* requires ICE to send out field memoranda and to provide training to ICE personnel on the use of the questionnaire. Neither agreement implies that the questionnaire is invalid if all fields are not completely filled in.

return receipt requested, addressed to a person at his last known address.

The evidence of record indicates that the Notice to Deliver Alien was sent to the obligor at [REDACTED] on August 30, 2002 via certified mail. This notice demanded that the obligor produce the bonded alien on September 27, 2002. Although the record does not contain a domestic return receipt, counsel acknowledges, on appeal, that the obligor received the notice. Consequently, the record clearly establishes that the notice was properly served on the obligor in compliance with 8 C.F.R. § 103.5a(a)(2)(iv).

It is clear from the language used in the bond agreement that the obligor shall cause the alien to be produced or the alien shall produce himself to an ICE officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by ICE for detention or removal.

It must be noted that delivery bonds are exacted to insure that aliens will be produced when and where required by ICE for hearings or removal. Such bonds are necessary in order for ICE to function in an orderly manner. The courts have long considered the confusion which would result if aliens could be surrendered at any time or place it suited the alien's or the surety's convenience. *Matter of L-*, 3 I&N Dec. 862 (C.O. 1950).

After a careful review of the record, it is concluded that the conditions of the bond have been substantially violated, and the collateral has been forfeited. The decision of the district director will not be disturbed.

**ORDER:** The appeal is dismissed.